

1887 Majesty that this appeal should be dismissed and the judgment
 of the High Court affirmed.
 THE MAHARANI OF BURDWAN
 v.
 KRISHNA KAMINI DASL.
Appeal dismissed.
 Solicitor for the appellant: Mr. T. L. Wilson.
 C. B.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

1887 SUPRAMANYAN SETTY v. HURRY PROO MUG.*
 February 24. *Practice—Costs—Attorney's lien—Lien—Attaching creditor—Fund in Court—*
attached.

A sum of money had been paid into Court as admittedly due to the plaintiff in a certain suit; the plaintiff not having satisfied in full his attorney's taxed bill of costs, the attorney applied for payment out of the fund in Court. Previously to this application the fund had been attached by a third party. *Held* that the attorney was entitled to enforce his lien as against the attaching creditor for all costs incurred up to the date of attachment; that the attaching creditor was then entitled to be satisfied before the attorney could claim payment out of the balance in Court of any sum remaining due to him on account of his costs.

THIS was an application by Babu Nobin Chund Bural, attorney for the plaintiff in the above suit, on notice to the gomastah of the plaintiff, and to Messrs. Beeby and Rutter, attorneys for one Lubbah, for an order directing the payment out to him of a sum of Rs. 2,027-6 (being the balance due to him on account of taxed costs) from a sum of Rs. 2,291-10-6 standing to the credit of the above suit in the hands of the Accountant-General of the Court.

The taxed costs above referred to had been costs decreed in favor of the plaintiff in the above suit, which was one on an account stated, and in which the defendant had admitted a sum of Rs. 2,291-10-6 to be due to the plaintiff and had paid that amount into Court. The defendant in the above suit had made no payment on account of the sum decreed against him, and inasmuch as the plaintiff himself was living out of the jurisdiction in Madras, the plaintiff's attorney (having only received a

* Suit No. 393 of 1883.

part payment from the plaintiff on account of his costs) made the present application to obtain payment of the balance due to him.

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The application was opposed by one Lubbah, who had on the 18th June, 1886, attached the sums standing to the credit of the above mentioned suit in execution of an *allocatur* for certain costs incurred by Lubbah in opposing a claim made in the suit of *Setty v. Setty*, suit No. 465 of 1885 (the plaintiff in that case being also the plaintiff in the above mentioned case), to certain goods, the property of Lubbah, which had been attached in suit No. 465 of 1885 by the plaintiff as being the goods of the defendant in that suit.

Mr. *Stokoe* for Babu Nobin Chund Bural.

Mr. *Bonnerjee* for the attaching creditor.

Mr. *Stokoe*.—The attorney has a lien on the fund in Court for his costs; he is entitled to actively enforce that lien to the extent of his costs of the particular suit under which the fund arises: 2 Daniell's Chancery Practice (6th ed.), 1975 to 1986; see also *Lloyd v. Mason* (1); *Hamer v. Giles* (2); *Nawab Nuzim of Bengal v. Heralall Seal* (3).

Mr. *Bonnerjee*.—The attorney has no further lien after the fund has practically ceased to be the fund in question, *i.e.*, after attachment. The money has not been acquired through the diligence of the attorney. I rely on *Hough v. Edwards* (4).

TREVELYAN, J.—The question is whether the attorney has a lien in priority to the attaching creditor for costs incurred subsequent to the attachment.

It is admitted by Mr. *Bonnerjee* that the attorney is entitled to a lien for any costs incurred prior to the attachment. There is apparently no authority on the point. It seems to me to be wrong to decide that the attorney can go on holding this fund subject to a lien for his costs subsequently incurred. It seems to me what is attached is the right of the judgment-debtor at

(1) 4 Hare, 132.

(2) L. R., 11 Ch. D., 942 (947.)

(3) 10 B. L. R., 444.

(4) 26 L. J. Exch., 54; 2 Jur. N. S., 814.

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the time of the attachment, that is, the money subject to the lien for costs then incurred. Babu Nobin Chund Bural will be entitled to be paid the amount due to him for costs up to the 18th June, 1886, the date of the attachment. Then Mr. Bonnerjee's client will be entitled to any balance that may remain as far as his claim extends; any further balance, if any, to Babu Nobin Chund Bural in satisfaction of his claim for costs. Costs of both parties to be paid out of the fund in the first instance.

Attorney for the applicant: Baboo *Nobin Chund Bural*.

Attorneys for Lubbah: Messrs. *Beeby and Rutter*.

T. A. P.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Cunningham.

1887
 March 7.

PAT DASI (PLAINTIFF) v. SHARUP CHAND MALA AND ANOTHER (DEFENDANTS),*

Decree, Evidence of satisfaction of—Adjustment of decree without certifying—Civil Procedure Code, 1882, s. 258—Proof of payment of decree otherwise than by certificate—Fraudulent execution of decree after adjustment.

Where a decree has been satisfied out of Court, and the payment has not been recorded in accordance with s. 258 of the Civil Procedure Code, it is nevertheless open to the *quondam* judgment-debtor, when suing to have a sale made by the *quondam* decree-holder after satisfaction of the decree set aside, to prove the payment of the decretal money otherwise than by a certificate under that section.

THIS was a suit for confirmation of possession of certain property and for a declaration that an auction sale of the said property might be set aside as invalid.

It appeared that one Shib Prosad Pal had obtained a decree against the present plaintiff, Pat Dasi, for arrears of rent of a certain under-tenure, and that Pat Dasi had satisfied this decree

* Appeal from Appellate Decree No. 1272 of 1886, against the decree of R. Towers, Esq., Judge of Midnapore, dated the 9th of April, 1886, reversing the decree of Baboo Revali Churn Banerjee, Munsiff of Contai, dated the 6th of May, 1885.